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Monterey Gourmet Foods, Inc.

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

11 MONTEREY GOURMET FOODS,
INC., a Delaware corporation,

12 Plaintiff,

13 vs.

14 WINDSOR QUALITY FOOD
15 COMPANY LTD., a Texas Limited
Partnership; and DOES 1 through 20,
16 inclusive,

17 Defendants.

No. C08-01316 (JCS)

Case assigned for all purposes to
Hon. Joseph C. Spero

**DECLARATION OF KATHRYN J. ALLEN
IN SUPPORT OF REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
COUNTERDEFENDANT MONTEREY
GOURMET FOODS, INC.'S SPECIAL
MOTION TO STRIKE AND MOTION TO
DISMISS COUNTERCLAIM OF WINDSOR
QUALITY FOOD COMPANY, LTD.
[FRE Rule 201]**

Date: August 15, 2008
Time: 1:30 p.m.
Courtroom A (Hon. Joseph C. Spero)
Trial Date: Not Set

Accompanying Papers: Memoranda of
Points and Authorities for Special Motion to
Strike; Motion to Dismiss

23 AND RELATED COUNTERCLAIM.

25 **DECLARATION OF KATHRYN J. ALLEN IN SUPPORT OF REQUEST**
26 **FOR JUDICIAL NOTICE IN SUPPORT OF MONTEREY GOURMET**
FOODS, INC.'S MOTIONS TO STRIKE AND DISMISS COUNTERCLAIMS

27
28 I, Kathryn J. Allen, state and declare as follows:

1 1. I am an attorney at law licensed to practice before all Courts of the State of
2 California, and in the United States District Court for the Northern District of California. I
3 am an associate of Shapiro Buchman Provine & Patton, LLP, attorneys of record for
4 plaintiff and counterdefendant Monterey Gourmet Foods, Inc. ("MGF"). I make this
5 Declaration in support of MGF's request for judicial notice which was filed May 1, 2008 in
6 the above-entitled action, and because counterclaimant Windsor Quality Food Company,
7 Ltd. ("Windsor") has, in its opposition papers, questioned the authenticity of some of the
8 matters requested for judicial notice.

9 2. Our law firm also acts as outside counsel for MGF on numerous matters,
10 including the maintenance of its intellectual property. In the role of outside counsel, I
11 personally handle most of MGF's trademark applications, registrations, and renewals, as
12 well as its dealings with the United States Patent and Trademark Office ("USPTO"), and
13 am familiar with MGF's trademarks and other intellectual property.

14 3. I have reviewed and was involved in preparing MGF's request for judicial
15 notice which was filed May 1, 2008 in the above-entitled action ("RJN"). I know that the
16 matters contained therein are true, correct, and authentic representations and copies of
17 what they purport to be, and that they were obtained from sources which I am informed
18 and believe are reasonably reliable and know to be readily obtainable.

19 4. I know that the trademark registrations for *Monterey Pasta Company* that
20 are listed as Items 1-4 and attached as Exhibits 1-4 to the RJN, are true, accurate, and
21 authentic copies of the USPTO's trademark registration certificates for the marks
22 referenced in the RJN, and that those exhibits are true, accurate, and authentic copies of
23 the registration certificates for each such mark obtained and printed directly from the
24 USPTO's Trademark Electronic Search System ("TESS") records for each such mark.
25 The exhibits are also true, accurate, and authentic copies of the registration certificates
26 for each such mark as shown in the USPTO's electronic Trademark Document Retrieval
27 ("TDR") system for each such mark.

28 5. I know that the label specimen that is listed as Item 5 and attached as

1 Exhibit 5 to the RJN is a true, accurate, and authentic copy of one label specimen that is
2 contained in the USPTO's file for Trademark Registration No. 1,951,624, for *Monterey*
3 *Pasta Company*, registered January 23, 1996, and that this specimen (Exhibit 5) was
4 obtained and printed directly from 2-page PDF Printout from the USPTO's TDR webpage
5 for Registration No. 1,951,624 (Serial No. 74,802,510), and is available on the USPTO's
6 TDR section of its internet portal (<http://tmportal.uspto.gov>).

7 6. I know that the Combined Declaration of Use & Incontestability Under
8 Sections 8 & 15, that is listed as Item 8 and attached as Exhibit 8 to the RJN is a true,
9 accurate, and authentic copy of the Combined Declaration of Use & Incontestability, filed
10 with the USPTO on November 13, 2001, for Registration No. 1,953,489, for *Monterey*
11 *Pasta Company*. The copy of this Declaration attached to the RJN (Exhibit 8) was
12 obtained and printed directly from PDF Printout from the USPTO's TDR webpage for
13 Registration No. 1,953,489 (Serial No. 74,802,510), and is available on the USPTO's
14 TDR section of its internet portal (<http://tmportal.uspto.gov>).

15 7. I know that the USPTO Trademark Assignment Abstract of Title for
16 Registration No. 1,953,489, for *Monterey Pasta Company*, that is listed as Item 9 and
17 attached as Exhibit 9 to the RJN is a true, accurate, and authentic copy of the
18 Assignment Abstract of Title for Registration No. 1,953,489 recorded November 11,
19 2004, establishing name change for the registrant of Registration No. 1,953,489, from
20 Monterey Pasta Company to Monterey Gourmet Foods, Inc. The copy of this
21 Assignment Abstract was obtained and printed directly from the USPTO's "Assignments
22 on the Web" webpage for Registration No. 1,953,489 (Serial No. 74,802,510), and is
23 available on the USPTO's that section of its internet portal (<http://tmportal.uspto.gov>).

24 8. I know that the reference that is listed as Item 10 and attached as Exhibit
25 10 to the RJN is a true, accurate, and authentic copy of Page 246 from Bright, Revised
26 Edition of Gudde, *California Place Names* (1998 The Regents of the University of
27 California), listing the origin and etymology for the term "Monterey."

28 9. I know that the reference that is listed as Item 11 and attached as Exhibit

1 11 to the RJN is a true, accurate, and authentic copy of Page 20, Listing No. 183, from
2 Beatty, *County Name Origins of the United States* (McFarland & Company, Inc., 2001),
3 listing the origin for the term "Monterey County."

4 10. I know that the reference that is listed as Item 12 and attached as Exhibit
5 12 to the RJN is a true, accurate, and authentic copy of the internet webpage for the
6 Wikipedia® Website List of California county name etymologies, listing the etymology for
7 "Monterey County," and that this reference was printed directly from that webpage.

8 11. I know that the reference that is listed as Item 13 and attached as Exhibit
9 13 to the RJN is a true, accurate, and authentic copy of Page 763 from the Merriam
10 Webster's Geographical Dictionary (1997), listing "Monterey," and that this reference
11 was printed directly from that page.

12 12. I know that the reference that is listed as Item 14 and attached as Exhibit
13 14 to the RJN is a true, accurate, and authentic copy of the webpage entry for The
14 Columbia Gazetteer of North America © (2000 Columbia University Press), listing
15 "Monterey, " and that this reference was printed directly from that webpage.

16 13. I know that the reference that is listed as Item 15 and attached as Exhibit
17 15 to the RJN is a true, accurate, and authentic copy of the internet webpage for the
18 Wikipedia® Website encyclopedic listing for "Monterey, California," and that this
19 reference was printed directly from that webpage.

20 14. I know that the reference that is listed as Item 16 and attached as Exhibit
21 16 to the RJN is a true, accurate, and authentic copy of the Google™ Maps internet
22 webpage listing for "Monterrei" (aka "Monterrey"), Spain, and that this reference was
23 printed directly from that webpage.

24 15. I know that the reference that is listed as Item 17 and attached as Exhibit
25 17 to the RJN is a true, accurate, and authentic copy of an Internet Webpage (University
26 of A Coruna) depicting "Castillo de Monterrey," Spain and that this reference was printed
27 directly from that webpage.

28 16. I know that the reference that is listed as Item 18 and attached as Exhibit

1 18 to the RJN is a true, accurate, and authentic copy of the internet webpage for the
2 Wikipedia® Website encyclopedic listing for "Monterrey, Mexico and that this reference
3 was printed directly from that webpage.

4 17. I know that the reference that is listed as Item 18 and attached as Exhibit
5 18 to the RJN is a true, accurate, and authentic copy of the internet webpage for the
6 Wikitravel webpage article and Wikipedia® Website encyclopedic listings for certain U.S.
7 states with towns named "Monterey," and that this reference was printed directly from
8 those webpage entries.

9 18. I declare under penalty of perjury under the laws of the State of California
10 and the United States of America that the foregoing is true and correct and of my own
11 personal knowledge, except as to those matters stated on information and belief, and as
12 to those matters, I believe them to be true and correct.

13 Executed this 5th day of June, 2008, at Walnut Creek, California.

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16 Kathryn J. Allen

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